In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-19-00057-CV

INSIGNIA HOSPITALITY GROUP, INC., APPELLANT

V.

JALARAM GURU, LLC AND DUMAS MANAGEMENT, LLC, APPELLEE

On Appeal from the 69th District Court
Moore County, Texas
Trial Court No. 17-51, Honorable Ron Enns, Presiding

May 27, 2020

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and HATCH, JJ.

This appeal involves the management of hotels in the Dumas, Texas area. Jalaram Guru Inc. owned one such hotel, a Holiday Inn Express. It also owned Dumas Management LLC, which company owned a La Quinta Inn. After operating their respective facilities themselves for some time, both contracted with Insignia Hospitality Group, Inc. in 2015 to oversee their operation. Those arrangements were short-lived, having lasted about two years. It also resulted in the parties suing each other for breached contract. Trial was to a jury, which awarded Jalaram $196,737 against Insignia.

In turn, the jury rendered verdict in favor of Insignia against Jalaram for $15,098 and against Dumas for $12,934. It did not have the opportunity to consider whether Dumas could recover against Insignia for breached contract since the trial court refused to submit jury questions on that claim. The trial court eventually entered judgment awarding Jalaram recovery against Insignia but not vice-versa.[1] However, Insignia was granted recovery against Dumas in that judgment. Insignia filed its notice of appeal and Dumas cross-appealed. This appeal followed. We modify the final judgment to deny recovery by Jalaram against Insignia and affirm in all other respects.

Insignia's Appeal

Failure to Supplement Discovery

We begin with the issues raised by Insignia. The first is whether the trial court erred in admitting the testimony and opinions of Jalaram's expert (Culligan) on the topic of lost profits. Allegedly, Jalaram had not supplemented previous discovery with it; thus, it should have been excluded. We sustain the issue.

In an initial report, Culligan opined that Jalaram suffered "damages from $425,000 to $550,000 in total lost revenues." This report and an "enormous set of financials" were disclosed to Insignia during discovery. On the second day of trial, Jalaram sought to introduce, as a demonstrative exhibit, DX57 and Culligan's testimony about the lost profits suffered by Jalaram due to Insignia's breach. The amount of lost profits, according to the witness, were $196,737. Insignia objected, maintaining that Culligan's lost profits calculation had never been disclosed prior to trial. This, it contended, ran afoul of

[1]The jury also found that Insignia breached the contract first, which precluded Insignia from enforcing it. *See Brownhawk, L.P. v. Monterrey Homes, Inc.*, 327 S.W.3d 342, 347 (Tex. App.—El Paso 2010, no pet.) (stating that when a contracting party fails to perform a material obligation of the agreement, the other party's subsequent failure to perform is excused).

discovery rules which requires disclosure of such calculations. According to Insignia, the failure to timely disclose Culligan's calculations for lost *profits* when all other disclosed material suggested Jalaram sought approximately half a million dollars for lost *revenues* instead triggered Texas Rule of Civil Procedure 193.6. The latter rule provides that a party who fails to make, amend, or supplement a discovery responses in a timely manner may not introduce in evidence the material or information that was not timely disclosed, unless the court finds 1) good cause for the failure or (2) the failure did not unfairly surprise or unfairly prejudice the other party. *See* TEX. R. CIV. P. 193.6(a).

Years ago, our Supreme Court told us that "the rules of discovery were changed to prevent trials by ambush and to ensure that fairness would prevail." *Gutierrez v. Dallas Indep. Sch. Dist.*, 729 S.W.2d 691, 693 (Tex. 1987). Discovery "allow[s] the parties 'to obtain the fullest knowledge of issues and facts prior to trial.'" *Id.* (quoting *West v. Solito,* 563 S.W.2d 240 (Tex. 1978)). That is no less true today. *See In re Newport Classic Homes, L.P. L.L.C.*, No. 04-18-00126-CV, 2018 Tex. App. LEXIS 8231, at *10 (Tex. App.—San Antonio Oct. 10, 2018, orig. proceeding) (mem. op. on reh'g) (stating that the purpose of Rule 199.6's filing requirement before hearing is to prevent hearing by ambush); *Lopez v. La Madeleine of Tex., Inc.*, 200 S.W.3d 854, 860 (Tex. App.—Dallas 2006, no pet.) (stating that the discovery rules serve to encourage full discovery of the issues and facts before trial so "parties can make realistic assessments of their respective positions in order to facilitate settlements and prevent trial by ambush").

Next, no one denies that part of the discovery obligation includes the duty of a party to supplement discovery responses when it knows them to be incomplete or no longer accurate. *See Lopez*, 200 S.W.3d at 860. Should supplementation not occur then

the remedy is the automatic, nondiscretionary exclusion of the evidence or data sought to be used, except in two instances. *Id.*; *accord Locascio v. Mongrain,* No. 07-18-00280-CV, 2019 Tex. App. LEXIS 8795, at *25 (Tex. App.—Amarillo Sept. 30, 2019, no pet.) (mem. op.) (noting that exclusion was automatic except in two instances); *Gibbs v. Bureaus Inv. Grp. Portfolio No. 14, LLC,* 441 S.W.3d 764, 766 (Tex. App.—El Paso 2014, no pet.) (noting exclusion is automatic); *Cornejo v. Jones*, No. 05-12-01256-CV, 2014 Tex. App. LEXIS 966, at *8 (Tex. App.—Dallas Jan. 29, 2014, no pet.) (mem. op.) (stating that per Rule 193.6, the trial court possesses no discretion and must exclude evidence not timely provided, amended, or supplemented in response). Those two instances involve good cause and the lack of surprise or prejudice. *See Locascio*, 2019 Tex. App. LEXIS 8795, at *25; TEX. R. CIV. P. 193.6(a). That is, exclusion is mandatory unless the party failing to supplement proves either good cause for its neglect or the lack of unfair surprise and prejudice. *See Lopez*, 200 S.W.3d at 860. Moreover, any finding of good cause or lack of surprise must be supported by the record. *Cornejo*, 2014 Tex. App. LEXIS 966, at *9.

Here, the evidence Jalaram sought to introduce at trial but failed to supplement during discovery concerned the lost profits it allegedly suffered due to the breach of contract. Culligan had indicated, via his report tendered during discovery, that damages sought were to be measured by lost revenues and those revenues ranged from $425,000 to $550,000. That changed on the second day of trial when Jalaram sought to prove its damages by having its expert discuss lost profits.

Neither party suggests that lost revenues and lost profits are one and the same. This may be because they are not. *See Heat Shrink Innovations, LLC v. Med. Extrusion*

Techs.-Tex., Inc., No. 02-12-00512-CV, 2014 Tex. App. LEXIS 11494, at *15–16 (Tex. App.—Fort Worth Oct. 16, 2014, pet. denied) (mem. op.) (noting that appellee METT "did not provide the appellants with a 'single complete calculation of lost profits.' It only provided evidence of lost sales, which is not the same thing."); *see also Holt Atherton Indus., Inc. v. Heine*, 835 S.W.2d 80, 84 (Tex. 1992) (stating that "lost income is not the correct measure of damages."). Nor does Jalaram argue that it 1) actually supplemented its discovery requests to correct discovery responses it knew to be no longer true or 2) had good cause for neglecting to do so. Instead, it sought to convince the trial court that the lack of supplementation did not cause Insignia unfair surprise or prejudice.

Its initial foray to justify the failure to supplement consisted of suggesting that Insignia had before it the data needed to conduct its own lost profit analysis. And, this seems to be the argument that swayed the trial court.[2] To accept this argument, though, would be to impose upon Insignia the obligation to anticipate that Jalaram planned to leave the road to damages it built during discovery. But, as said in *Lopez*, "[t]he rules were revised to make that sort of anticipation unnecessary." *Lopez*, 200 S.W.3d at 863 (rejecting the argument that Lopez should have anticipated La Madeleine had and would introduce the videotape and photos concerning his physical capabilities). This is not a situation where Jalaram revealed through discovery alternative damage models and then chose one at trial. Nor is it one where an expert merely modified his testimony based on refinements in his calculations through the time of trial. *See Vela v. Wagner & Brown, Ltd.*, 203 S.W.3d 37, 53 (Tex. App.—San Antonio 2006, no pet.) (op. on reh'g) (noting

[2] Prior to ruling on Insignia's objections, the trial court sought confirmation from Jalaram that the data underlying Culligan's lost profit analysis was included in the materials previously disclosed during discovery.

that, when an expert simply applies different data of record to a previously disclosed formula, there is no need to supplement the opinion); *Koko Motel, Inc. v. Mayo*, 91 S.W.3d 41, 50–51 (Tex. App.—Amarillo 2002, pet. denied) (noting same). Rather, Jalaram (through its expert Culligan) told Insignia, during discovery, its damages were of a certain range according to a damage model founded on lost revenue. Then, it opted to pursue a different range of damages calculated through a different damage model, that is, one founded on lost profits.

The situation before us likens to that in *Heat Shrink* where METT also failed to provide during discovery a single complete calculation of lost profits. It argued at trial that the default caused no surprise or prejudice since its opponent could have calculated the sum from discovery it had provided. *Heat Shrink Innovations, LLC*, 2014 Tex. App. LEXIS 11494, at *15–16. In rejecting the contention, the court said "it was not [Heat Shrink's] burden, but METT's" to make and reveal the calculation. *Id.* The same is true here. Jalaram had the burden to do one complete calculation of its lost profits and reveal it to Insignia as part of its duty to supplement discovery. Insignia was not obligated to anticipate that Jalaram would pursue lost profits (in lieu of lost revenues) and unilaterally calculate what they were. And, to the extent that the trial court deemed the availability of data to calculate an undisclosed change in the damages model minimized prejudice, it erred.

Nor is it of consequence that Insignia refused the trial court's offer of a mistrial. There is authority indicating that an objection of the ilk at bar may be waived when the complaining party spurns an offer of a continuance. *See, e.g.*, *Sundance Energy, Inc. v. NRP Oil & Gas LLP*, No. 01-18-00340-CV, 2019 Tex. App. LEXIS 7223, at *26 (Tex.

App.—Houston [1st Dist.] Aug. 15, 2019, pet. denied) (mem. op.) (holding that, "having refused the trial court's offer of a continuance pursuant to Texas Rule of Civil Procedure 193.6(c), [appellant] cannot now argue that it suffered unfair prejudice by the admission of [appellee]'s attorney's fees evidence" that was untimely disclosed); *Orbison v. Ma-Tex Rope Co.*, 553 S.W.3d 17, 40 (Tex. App.—Texarkana 2018, pet. denied) (holding "that, by refusing the offered continuance, Appellants waived any complaint regarding the admission of late-disclosed damage evidence or the damage testimony of [experts]"). However, there is a difference between a continuance and mistrial. The former postpones the continuation of the ongoing trial. The latter ends the trial and causes the parties to begin anew. One cannot reasonably deny that being forced to begin anew may be financially punitive, such as when the party subjected to discovery abuse is denied opportunity to recoup its litigation expenses incurred up to the time of mistrial. Jalaram did not offer to cover those expenses for Insignia. Nor did the trial court suggest it would require such from Jalaram. Without reimbursement, a mistrial would effectively afford Jalaram time to correct its wrong while economically punishing Insignia for complaining. That is hardly an acceptable option given that the discovery rules exist "to ensure that fairness would prevail." *See Gutierrez*, 729 S.W.2d at 693.

That mistrial was offered is telling in a different respect, though. Normally, mistrial is a remedy available only in extreme circumstances involving highly prejudicial and incurable errors. *In re R.V.*, No. 07-19-00326-CV, 2020 Tex. App. LEXIS 1504, at *5 (Tex. App.—Amarillo Feb. 21, 2020, no pet.) (mem. op.). Given that, the trial court offering a mistrial exemplifies its belief as to the gravity of the situation. Indeed, the trial court itself observed that allowing Insignia to cross-examine Culligan to determine if the

discovery materials allegedly revealed during discovery actually supported each component underlying Culligan's entire lost profit analysis could extend his cross-examination for "two weeks." In so observing, the trial court recognized the magnitude of the adverse impact belatedly revealing the lost profits model could have on the trial.

As for the suggestion that Insignia should have sought a continuance and the failure to do so somehow waived its complaint, we find authority indicating that the onus lay with Jalaram to pursue that avenue. *See Sadeghian v. Wright,* No. 06-18-00062-CV, 2019 Tex. App. LEXIS 354, at *16–17 (Tex. App.—Texarkana Jan. 18, 2019, pet. denied) (mem. op.) (explaining that, because the proponent of the challenged evidence "did not avail himself of 'several built-in safeguards creating exceptions to the automatic exclusion,' we cannot conclude that the trial court abused its discretion 'by following rule 193.6's mandate and by automatically excluding" undesignated witnesses and evidence of previously undisclosed matters"); *Santana v. Santana*, No. 02-15-00140-CV, 2016 Tex. App. LEXIS 628, at *5 (Tex. App.—Fort Worth Jan. 21, 2016, no pet.) (mem. op.) (stating that "Maria [the proponent of the evidence] did not present any evidence to show that her failure to designate the FCS representative as a witness fell within any exception to rule 193.6(b)'s automatic exclusion, and because Maria did not request a continuance, the trial court excluded the testimony of the FCS representative"). That seems appropriate given the wording of Rule 193.6(c). It speaks of affording a continuance "[e]ven if the party seeking to introduce the evidence or call the witness fails to carry the burden" to show good cause or lack of surprise or prejudice. TEX. R. CIV. P. 193.6(c). In other words, exclusion is automatic unless the proponent of the evidence satisfies one of the two exceptions to exclusion. But, even then, the court may still grant a continuance to relieve

the proponent of the effect of its default. In effect, the continuance exists to help the proponent of the evidence, not the opponent. It would be rather nonsensical to require the opponent to ask for a continuance when the rule of procedure already granted it the actual remedy of automatic exclusion. And, we opt not to impose such a nonsensical burden on the opponent as a prerequisite to complaining on appeal about the trial court's refusal to grant the nondiscretionary, automatic remedy afforded by the rule.

That Insignia was able to cross-examine Culligan after the trial court admitted the evidence similarly rings somewhat hollow. Again, the remedy is automatic exclusion of the undisclosed evidence unless the proponent establishes a lack of surprise and prejudice. This does not connote a "wait-and-see" tack dependent upon the objecting party's ability to minimize the harm wrought by its adversary's default. It connotes an immediate result subject to avoidance upon the satisfaction of certain conditions. In other words, automatic exclusion may not be avoided through the hope that, despite the existence of surprise and prejudice, the party may find a way to minimize such adversity as the trial progresses.[3] Exclusion is automatic unless ***prior*** to exclusion the proponent of the evidence shows either good cause or lack of surprise and prejudice.

Nor is it of consequence here that the sums pursued under the lost profit theory were less than the amounts sought under lost revenues. Insignia was prepared to illustrate that lost revenues was not the legally applicable damage model. Had it succeeded, then Jalaram would have recovered nothing. Nothing is much less than the $196,737 sum Culligan ultimately said was due his client. So, we reject Jalaram's

[3] This is not to say that an opponent's ability to effectively cross-examine the expert has no place in an eventual harm analysis under Texas Rule of Appellate Procedure 44. But, that presupposes a finding of error.

suggestion that it should be excused from the obligation to supplement and the effect of Rule 193.6 because it sought a lesser amount of damages.

On the other hand, there is a counterpoint to Jalaram's pursuit of lesser damages that favors Insignia's position. As mentioned earlier, Rule 193.6 serves many purposes. One is to avoid trial by ambush; another is to promote the responsible assessment of settlement. *See In re D.W.G.K.*, 558 S.W.3d 671, 680 (Tex. App.—Texarkana 2018, pet. denied) (citing three purposes of Rule 193.6 as 1) to promote responsible assessment of settlement, 2) to prevent trial by ambush, and 3) to give the other party the opportunity to prepare rebuttal to expert testimony); *accord Lopez,* 200 S.W.3d at 860 (stating that the discovery rules serve to encourage full discovery of the issues and facts before trial so "parties can make realistic assessments of their respective positions in order to facilitate settlements and prevent trial by ambush"). The cost-benefit analysis of trial versus pretrial settlement undoubtedly changes when 1) potential damages sought drop from over one-half million dollars to less than $200,000 and 2) litigation expenses and attorney's fees would similarly shrink. Failing to supplement discovery denied Insignia the chance to undertake that cost-benefit analysis.

Based on the above considerations, we conclude that it was error to admit Culligan's testimony about lost profits over Insignia's objection. The indicia Jalaram proffered to illustrate lack of unfair surprise or prejudice were either inapplicable or insufficient. Thus, the evidence should have been excluded. *Accord Locascio*, 2019 Tex. App. LEXIS 8795, at *25–26 (holding that trial court abused its discretion when it admitted testimony on lost profits that had not been supplemented during discovery). And, we find the error harmful given that 1) Jalaram argued to the trial court that expert testimony was

needed for the jury to understand the damage model and damages sought at trial and 2) the amount of lost profits awarded by the jury was the very amount to which Culligan testified. Under that circumstance, the error probably caused the rendition of an improper judgment. *See* TEX. R. APP. P. 44.1(a) (stating that a judgment may not be reversed on appeal unless the court of appeals concludes that the error probably caused the rendition of an improper judgment or probably prevented the appellant from properly presenting the cause to the appellate court).

Sufficiency of the Evidence

Next, we consider Insignia's contention that the evidence was both legally and factually insufficient to support the jury's award of $196,737 as lost profits. It believes the evidence was purportedly so because "Jalaram failed to employ a proper lost profits methodology." We do not read its complaint as one attacking the evidence establishing a nexus between Insignia's breach of contract and lost profits but rather how lost profits were calculated.[4] We sustain the issue.

Lost profits are based on net profits, as opposed to gross revenue or gross profits. *Tyler Title Co., LLC v. Cowley*, No. 12-18-00043-CV, 2019 Tex. App. LEXIS 2952, at *16–17 (Tex. App.—Tyler Apr. 10, 2019, no pet.) (mem. op.); *Kennedy Con., Inc. v. Forman,* 502 S.W.3d 486, 497 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). Net profits are the difference between a business's total receipts and all the expenses incurred in carrying on that business. *Tyler Title Co.,* 2019 Tex. App. LEXIS 2952, at *16.[5] No one

[4] In that regard, it seems Jalaram's expert merely concluded that the requisite link existed because he found no other reason for the purported lost profits.

[5] This differs from gross profits which consist of total sales less the cost of goods sold without adjustment being made for additional expenses and taxes. *Id.* at *16–17.

here denies that there are various models by which lost profits may be calculated. But, irrespective of the model used, the loss must be established through competent evidence with reasonable certainty. *ERI Consulting Eng'rs, Inc. v. Swinnea*, 318 S.W.3d 867, 876 (Tex. 2010) (quoting *Holt Atherton Indus.*, 835 S.W.2d at 84). And, what constitutes reasonably certain evidence of lost profits is fact intensive. *Id.* At the very least, the opinions or estimates used must be based on objective facts, figures, or data. *Id.* Moreover, the requisite data must consist of more than simply showing some lost profits.

We further note that with regard to the method of calculating lost profits, the amount "must be predicated on one complete calculation." *Holt Atherton Indus.*, 835 S.W.2d at 85. This does not mean that any one particular method must be used. *Id.* It means that "once a party has chosen a particular method for measuring the lost profits, [that method] must provide a complete calculation." *Id.* (concluding that the Heines failed to present legally sufficient evidence of lost profits since pieces of several different methods of calculation were utilized, as opposed to one); *accord Bayer Corp. v. DX Terminals, Ltd*, 214 S.W.3d 586, 606 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (stating that "the concept of damages 'based on one complete calculation' simply means that damages must be based on one method of calculation and cannot be the result of combining figures from several methods").

To the foregoing, we add another rule. It provides that when conducting a "sufficiency of the evidence" analysis in civil cases, inadmissible evidence may not be considered. *Walker v. Lampman*, No. 10-06-00096-CV, 2007 Tex. App. LEXIS 6380, at *4–5 (Tex. App.—Waco August 8, 2007, pet. denied) (mem. op.); *N. Dallas Diagnostic Ctr. v. Dewberry*, 900 S.W.2d 90, 97 (Tex. App.—Dallas 1995, writ denied); *accord Sylvia*

v. Tex. Dep't of Family & Protective Servs., No. 03-09-00427-CV, 2010 Tex. App. LEXIS 2752, at *3–4 (Tex. App.—Austin Apr. 15, 2010, pet. ref'd) (mem. op.) (declining to consider inadmissible evidence in its sufficiency review); *Daredia v. Nat'l Distribs*., No. 05-04-00307-CV, 2005 Tex. App. LEXIS 3168, at *10–11 (Tex. App.—Dallas Apr. 28, 2005, pet. denied) (mem. op.) (same).

Our analysis begins with the observation that Culligan's testimony is beyond consideration in the sufficiency analysis. We previously held that it was inadmissible due to the failure of Jalaram to fulfill its obligation to supplement discovery. Being inadmissible, his testimony about lost profits fell outside the bucket of evidence through which we must sift when performing our sufficiency review. *See Walker*, 2007 Tex. App. LEXIS 6380, at *4–5; *N. Dallas Diagnostic Ctr.*, 900 S.W.2d at 97. And, this is problematic for Jalaram since Culligan was the sole witness to offer the one complete calculation mandated by *Holt*.

Contrary to Jalaram's suggestion otherwise, the testimony from Insignia's experts did not fill the void. For instance, one of the two experts Jalaram mentioned testified about the hotel's "EBITDA." The latter, however, described earnings before interest, taxes, depreciation and amortization.[6] Omitting taxes from the equation likens to a calculation of "gross profits," which again is not a proper measure of lost profits. *See Tyler Title Co.*, 2019 Tex. App. LEXIS 2952, at *16–17 (describing gross profits as total sales less the cost of goods sold without adjustment being made for additional expenses and *taxes*). The other expert discussed the hotel experiencing a drop in revenue. Revenue is one component of the equation used to calculate lost profits; it is not lost

[6] Culligan included depreciation in his analysis of lost profit. This too illustrates a difference between his lost profit analysis and the calculation of EBITDA.

profits, however. And, to the extent this witness also alluded to a reduction in "net income," that was a reference to the aforementioned EBITDA calculation. Indeed, the document to which he referred categorized net income and EBITDA as "net income/EBITDA." In other words, net income and EBIDTA were one and the same in the document. Being one and the same and EBIDTA being akin to gross as opposed to net profits, the reference to net income is not evidence of lost profits.

Without the one complete calculation of lost profits mandated by *Holt*, we cannot but sustain Insignia's contention that the jury's award of lost profits lacked the support of legally sufficient evidence. Because it does, we must render judgment that Jalaram take nothing from Insignia. And, rendering judgment in favor of Insignia relieves us from considering the other issues it asserted here.

Dumas Management's Appeal

We now turn to the cross-appeal of Dumas. The latter contends that the trial court erred in refusing to submit jury questions on whether 1) Insignia breached the La Quinta contract, 2) the breach, if any, caused damages, and 3) Insignia or Dumas breached first. Allegedly, evidence of record warranted the submission of those questions. We overrule the issue.

To recover for a breach of contract, the complainant must prove various elements of the claim. One such element is damages caused by the breach. *See Werline v. E. Tex. Salt Water Disposal Co.*, 209 S.W.3d 888, 898 (Tex. App.—Texarkana 2006), *aff'd*, 307 S.W.3d 267 (Tex. 2010) (outlining the elements of breach of contract, including proof that "the defendant's breach caused the claimant injury"). Furthermore, uncertainty about the fact of damages, as opposed to the amount, may preclude recovery. *Broyhill Furniture*

Indus., Inc. v. Schaffer, No. 05-11-01545-CV, 2013 Tex. App. LEXIS 10491, at *18 (Tex. App.—Dallas Aug. 20, 2013, no pet.) (mem. op.). That is the determinative matter here; the absence of evidence illustrating the fact of damages.

Dumas cites us to aspects of Culligan's testimony as some evidence of damage arising from the alleged breach. The testimony consists of the expert opining that "[i]t is reasonable to assume La Quinta also lost a modest level of additional revenue while Insignia was managing the Holiday Inn Express. The lack of collaborative pricing effort may have resulted in lost opportunities to grow rate or occupancy further." This opinion came at the end of a report discussing circumstances relating to Holiday Inn and Insignia's management of that hotel, not La Quinta. Moreover, the evidence or data upon which Culligan relied in deriving his assumption about a "modest" loss of "additional revenue" and the likelihood of "lost opportunities to grow rate and occupancy further" appear nowhere in the report. As such, his opinion is conclusory, if not conjectural and speculative. *See Bombardier Aero. Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W.3d 213, 223 (Tex. 2019) (stating that an expert's opinion is conclusory when the expert asserts a conclusion with no basis and that the expert must tie his conclusions to the facts which explain its basis). Since conclusory testimony is no evidence, *see id.* at 222, Culligan's factually unsupported observations are no evidence of the fact of damages, much less the amount. And, without evidence of damages, the trial court had no obligation to ask the jury if Insignia breached the Dumas contract resulting in damages.

Having sustained Insignia's first issue, we reverse that portion of the trial court's final judgment awarding Jalaram Guru, LLC recovery against Insignia Hospitality Group,

Inc. We modify the final judgment to order that Jalaram Guru, LLC take nothing against Insignia Hospitality Group, Inc. We then affirm the final judgment as modified.

Brian Quinn
Chief Justice